

This letter discusses dark fiber optics and taxation. See 35 ILCS 636/5-45. (This is a GIL.)

February 24, 2004

Dear Xxxxx:

This letter is in response to your letter dated November 11, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is sent to formally request a private letter ruling concerning exemption of dark fiber resellers from payment of assessments under the Simplified Municipal Telecommunications Tax Act ('Act').

AAA is currently negotiating an agreement under which it will construct a fiber optic cable system in CITY and lease the system under an Irrevocable Right of Use (IRU) arrangement to a retail telecommunications provider. The fiber system constructed by AAA will remain 'dark' or inactivated until the IRU holder assumes control of the system and installs fiber optics to allow the system to provide telecommunications services.

AAA is in the process of requesting right-of-way permits in several municipalities in the CITY and has found it necessary to be registered with the Illinois Department of Revenue in order to obtain these permits. AAA is filing a Form RT-3 declaring its status as a reseller, but has been advised informally by officials at the Illinois Department of Revenue that it should seek a letter ruling that fees will be due from the operator/retailer which will hold the IRU rather than to its owner/builder of the cable network. This ruling will be consistent with Section 5-45 of the Act which exempts resellers from payment of fees.

Your prompt attention to this matter would be appreciated.

Please contact me if you need additional information.

We are unable to issue the Private Letter Ruling you request. However, we can confirm that Section 5-45 of the Simplified Municipal Telecommunications Tax Act states as follows:

“Sec. 5-45. Resellers.

(a) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to a municipality with a population of 500,000 or more or to the Department for all other municipalities, for a resale number. Such applicant shall state facts which will show a municipality with a population of 500,000 or more or the Department for all other municipalities, why such applicant is not liable for tax authorized by this Act on any of such purchases and shall furnish such additional information as a municipality with a population of 500,000 or more or the Department for all other municipalities, may reasonably require.

(b) Upon approval of the application, a municipality with a population of 500,000 or more or the Department for all other municipalities, shall assign a resale number to the applicant and shall certify such number to the applicant. A municipality with a population of 500,000 or more or the Department for all other municipalities, may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

(c) Except as provided hereinabove in this Section, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from a municipality with a population of 500,000 or more or the Department for all other municipalities, and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.”

Please note that you should also see the Retailers' Occupation Tax Act provisions concerning construction contractors. 86 Ill. Adm. Code 130.1940.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:mks